

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANDREW WILSON)	
Claimant)	
)	
VS.)	
)	
SCHNEIDER NATIONAL, INC.)	
Respondent)	Docket No. 1,051,129
)	
AND)	
)	
LIBERTY INSURANCE CORPORATION)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the July 14, 2010, preliminary hearing Order entered by Administrative Law Judge Steven J. Howard. Michael J. Joshi, of Lenexa, Kansas, appeared for claimant. Kip A. Kubin, of Kansas City, Missouri, appeared for respondent.

The Administrative Law Judge (ALJ) ordered that Dr. Daniel Stechschulte, Jr., is to be claimant's authorized medical physician to treat his right shoulder. The ALJ made no specific findings concerning jurisdiction. Nevertheless, because the ALJ awarded benefits, it is implicit in his Order that he determined Kansas has jurisdiction over this claim.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the July 13, 2010, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Respondent contends that Kansas has no jurisdiction over this claim under its Workers Compensation Act because claimant did not suffer injury in Kansas, he did not perform the majority of his job duties within the state of Kansas, and his contract for employment with respondent was not formed in Kansas. This defense was raised by

respondent at the preliminary hearing. In fact, whether Kansas has jurisdiction was the only disputed issue at the preliminary hearing.¹

Claimant argues that there is substantial evidence in the record to show that claimant's principal place of employment is in the state of Kansas.

The issue for the Board's review is: Does the State of Kansas have jurisdiction over this claim under the Workers Compensation Act?

FINDINGS OF FACT

Claimant works for respondent as a truck driver. Respondent's main office is in Green Bay, Wisconsin. Claimant testified that he began working for respondent on March 19, 2008. He said an application was mailed to him, and he was interviewed over the phone by a recruiter for respondent. After that, claimant was required to travel to Dallas, Texas, for an orientation, a driving test, and a drug test. Claimant had to pass the driving test and drug test before he would be hired by respondent.

Respondent has an office in Lenexa, Kansas. Claimant reports to work at the Lenexa office, and his supervisor is in Lenexa. Claimant said when he goes into work at Lenexa, he checks out his truck, waits for the truck to be loaded, gets the paperwork, and then begins running his route. He said sometimes he can spend up to three hours waiting for his load. If he has any problems on the road, he would call back to Lenexa.

Claimant has been on several routes while working for respondent, but the route he was working on the date of his accident, November 5, 2009, was the Omaha north route. He testified that he traveled from Lenexa to the Missouri state line; from there to Nebraska City, Nebraska; Omaha, Nebraska; Plattsmouth, Nebraska; Maryville, Missouri; Savannah Missouri; St. Joseph, Missouri; Platte City, Missouri, and then returned to Lenexa, Kansas. When he was on that route, the majority of his route was outside of Kansas. However, claimant also testified that he has driven other routes that were all within the state of Kansas. Claimant testified that he has to undergo recertification training, and that training is done in Lenexa.

On November 5, 2009, claimant was on his route traveling to Maryville, Missouri, when his truck's right wheel went over the edge of the road and he skidded into a ditch. Claimant was taken to the hospital in Maryville by ambulance, where he described injuries to his right shoulder and right knee.

¹ P.H. Trans. at 3.

PRINCIPLES OF LAW

K.S.A. 44-506 states:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: Provided, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: Provided, however, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.³

ANALYSIS

Respondent argues that Kansas was not claimant's principal place of employment because claimant did not perform the majority of his job duties in the state of Kansas. In the course of his employment as an over-the-road trucker, claimant spent most of his actual driving time outside the state of Kansas. Nevertheless, claimant contends Kansas was his principal place of employment.⁴

Respondent asserts that the State of Kansas does not have jurisdiction to hear this claim because Claimant was not hired in Kansas and does not perform the majority of his work in Kansas. Claimant contends that Lenexa, Kansas was his base of operations and therefore was his principal place of employment. The

² K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, rev. denied 286 Kan. ___, (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. 1035 (2001).

³ K.S.A. 2009 Supp. 44-555c(k).

⁴ Although most of respondent's brief was devoted to arguing that the contract of employment was not made in Kansas, this was not claimant's contention.

claimant drove to the Lenexa office nightly. Once there he inspected his truck, waited for it to be loaded, received his paperwork and began his route. His [*sic*] ran a nightly route that took him to stops in Nebraska and Missouri. Upon completing his route he returned to Lenexa where he refueled his truck and turned in his paperwork. He repeated this routine daily. Claimant testified that his supervisor was also located in Lenexa and any problems that he would have on the job were reported to his supervisor in Lenexa, Kansas. Claimant testified that all recertification training was performed in Lenexa, Kansas. In *Knelson v. Meadowlanders*, 11 Kan. App. 2d 696 (1987) the claimant had signed a contract to play hockey for a New Jersey based hockey team, was assigned to Wichita, Kansas and was injured in Utah. The court held that Wichita, Kansas was the claimant's **base of operations** (emphasis added) and thus his principal place of employment. *Id.* at 699. Claimant does not believe that it can be argued credibly that Kansas was not his principal place of employment. He began each day and ended each day at the Schneider's in Lenexa, Kansas. All work activity other than driving was conducted from Lenexa. The fact that Claimant made no stops in Kansas on this particular route is immaterial and of no significance in determining his principal place of employment.⁵

This Board Member finds that Kansas was claimant's base of employment and that claimant's principal place of employment is in the state of Kansas.⁶

CONCLUSION

The State of Kansas has jurisdiction and the Kansas Workers Compensation Act applies to this claim.

ORDER

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Steven J. Howard dated July 14, 2010, is affirmed.

IT IS SO ORDERED.

⁵ Claimant's Brief at 2 (filed Aug. 17, 2010).

⁶ See *Transue v. Springfield Grocer Co., Inc.*, No. 1,021,246, 2005 WL 3665493 (Kan. WCAB Dec. 14, 2005); *Martin v. Atlantic Inland Carriers*, No. 270,363, 2003 WL 22150462 (Kan. WCAB Aug. 28, 2003); *Eaton v. Allen Freight Services d/b/a P.A.M. Transportation*, Nos. 220,451 and 220,452, 1997 WL 637781 (Kan. WCAB Sept. 23, 1997); *Polson v. Jack Cooper Transport Co., Inc.*, No. 163,515, 1994 WL 749116 (Kan. WCAB Sept. 16, 1994).

Dated this _____ day of September, 2010.

HONORABLE DUNCAN A. WHITTIER
BOARD MEMBER

c: Michael J. Joshi, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge